

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

INDIA BREWERIES, INC.,

Plaintiff,

Case No. 05-C-467

v.

MILLER BREWING COMPANY,

Defendant.

OPINION AND ORDER

Defendant Miller Brewing Company has moved to strike the jury demand made by the Plaintiff in this case on the ground that the parties' contract provides that the parties will try any dispute to the court. The parties are disputing issues which arose under their license agreement. The Plaintiff, India Breweries, Inc. (IBI), concedes that the license agreement provides for waiver of trial by jury, but says that it was not represented by counsel when it entered into the contract and that, although the parties negotiated terms, the Defendant refused to eliminate the jury waiver clause. The Plaintiff also alleges that some of its claims stem from a second agreement to import and distribute beer and, thus, are not subject to the jury waiver provision.

Nothing in the record establishes that IBI's waiver was not knowing and voluntary. The parties are both business organizations and both negotiated the terms of the agreement. The negotiations indicate that the Plaintiff had knowledge of the jury waiver provision. Thus, claims relating to the license agreement must be tried to the court. See D.H. Overmyer Company v. Frick Company, 405 U.S. 174, 185-86 (1972).

See also Oblix, Inc. v. Winecki, 374 F.3d 488, 490-92 (7th Cir. 2004) (arbitration clause implicitly waiving jury trial which was contained in adhesion contract upheld in favor of Defendant corporation over objection of individual). At this early stage of this litigation, the record does not establish that there is a second contract to import and distribute beer. Should that fact be established, the court will reconsider upholding the jury demand on claims arising from the second contract.

For these reasons, the court ORDERS that “Defendant Miller Brewing Company’s Motion to Strike Plaintiff’s Jury Demand” (filed June 15, 2005) IS GRANTED.

Done and Ordered in Chambers at the United States Courthouse,
Milwaukee, Wisconsin, this 1st day of August, 2005.

s/ Thomas J. Curran
Thomas J. Curran
United States District Judge